CR.MA/6398/2003 1/7 JUDGMENT

# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION No. 6398 of 2003**
**with**
**CRIMINAL MISC.APPLICATION No. 6392 of 2003**

**For Approval and Signature:**

**HON'BLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BALDEV P GANERIWAL & 1 - Applicant(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR HARIN P RAVAL for Petitioner No(s).: 1,2.

PUBLIC PROSECUTOR for Respondent No(s).: 1.

MR YOGESH S LAKHANI for Respondent No(s).: 2.

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**CORAM : HON'BLE MR.JUSTICE JAYANT PATEL**

**Date : 18/07/2005**

**ORAL JUDGMENT**

1.. The petitioners have preferred these petitions for quashing of complaints filed by the respondent No.2 which have been registered as M.Case No.1 of 2003 before the Ld.Magistrate below which the

Ld.Magistrate has passed the order for investigation under section 156(3) of Cr.P.C by police.

2. Heard Mr.Nanavaty for the petitioners in both the petitions and Mr.Gohil for the repondent No.1-State and Mr.Lakhani for the original complainant.

3. The law on the aspect of quashing of the complaint is settled in as much as if the accusation made in the complaint shows that the case is made out for commission of offence, in normal circumstances, the court would not exercise its power for quashing the complaint. A perusal of the complaint shows that as per the complainant the goods were entrusted to the company, namely, Diamond Shipping Co.Ltd of which the petitioners are Directors and other office bearers and the capacity of the said company was as carrier. As stated in the complaint, instead of making delivery of the goods at the destination, the consignee, the shipping company of which the petitioners are directors had authorised the company holding the goods in transit to dispose of the said goods and to appropriate the amount towards the outstanding dues of the shipping company and therefore prima facie it can not be said that the commission of offence is not made out of misappropriation of property which was entrusted by

the complainant to the shipping company. Under the circumstances, it would not be a case for quashing of the complaint as sought to be canvassed on behalf of the petitioners.

4. Mr.Nanavaty, Ld.counsel for the petitioners submitted that the Ld.Magistrate while passing the order under section 156 of Cr.P.C for investigation has not recorded the reasons and therefore he submitted that the order passed by the Ld.Magistrate deserves to be quashed and the matter deserves to be remanded to the Ld.Magistrate for recording reasons and for passing appropriate orders. He has relied upon the decision of this court in the matter of ***Sureshkumar Gupta vs State of Gujarat*** reported in ***1998(1) GLR 327.*** Even if it is considered that the reasons were required to be recorded, then also the said aspect would be of no much consequence because when this court prima facie found that the case is made out for commission of offence of criminal breach and offence of misappropriation, no useful purpose would be served in examining the aspects that the reasons are not recorded and therefore matter deserves to be remanded to the learned Magistrate. If such powers are exercised by this court it would result into futile exercise of power

because, in any case, investigation under section 156(3) would be required to be made by police and it may not be possible to the Ld.Magistrate to hold inquiry under section 202 of Cr.P.C. Considering the present factts and circumstances, I find that such direction need not be given in view of the aforesaid observations made by this court.

5. Mr.Nanavaty, Ld.counsel for the petitioners also submitted that earlier the complaint was filed by the complainant before the police and as per the information of the petitioner the inquiry was conducted and thereafter no action is taken in connection with the said complaint. However, he was candid enough in admitting that no FIR is registered in connection with the same incident. Therefore, if without registering the FIR, the police has conducted any inquiry, the same can not be said to be operating as bar for lodging the complaint before the court and its further investigation by the police under section 156(3) of Cr.P.C.

6. Mr.Nanavaty also submitted that the complainant has suppressed the material fact in the complaint that the suit is filed by the Shipping Company in Calcutta High Court for declaration that the documents of shipment and the transaction concerning

thereto are void and he further submitted that the complainant had also filed the claim before the National Consumer Disputes Redressal Commission and the same was withdrawn. As such, it appears that if the capacity of the shipping company is as an agent which is entrusted with the goods to handover or to deliver the goods to the consignee and if company misappropriated the goods towards its own consumption or for utilising the money to be adjusted against its own dues, it may give rise to civil wrong as well as action for criminal breach of trust. Therefore, merely because the suit is filed for declaratory relief or that the factum of filing petition before the National Consumer Disputes Redressal Commission is not disclosed, in my view, can not be said to be sufficient ground for quashing the complaint which otherwise makes out prima facie case against the accused.

7. Mr.Nanavaty, Ld.counsel for the petitioner lastly contended that in any event complaint against all the petitioners as Directors of the company can not be maintained because in his submission some of the directors have retired and some were not even holding the post of Director during the period when the transaction was entered into and the incident

had happened. Therefore, he submitted that the complaint deserves to be quashed qua such directors. As such, at this stage, this court not proceed on the basis that while holding the investigation the police may take action against all the directors who are named in the complaint. It will be for the concerned police officer investigating the complaint to examine as to whether the persons whose names are mentioned in the complaint as directors or in-charge of the company, were holding in the capacity as officers in-charge of the company at the relevant point of time and if such persons were not holding the office in the capacity as officer in charge or they had ceased to be the directors of the company during the period when the incident had happened in normal circumstances no action would be taken. As such, the said aspects would be premature at this stage, but, it deserves to be observed that the concerned police officer shall keep in mind the aforesaid aspects while conducting the investigation and shall take action in accordance with law against the officers of the company who were in charge of the company and were concerned with the transaction in question in respect of which the allegation is made for commission of offence for breach of trust

and misappropriation.

8. In view of the above, subject to aforesaid observations, both the petitions are rejected. Rule is discharged. Notice/Rule discharged. Interim relief vacated.

(**JAYANT PATEL,J)**

18.7.05/murty